

**State of California
California Regional Water Quality Control Board, Los Angeles Region**

RESOLUTION NO. 07-0XX

September 6, 2007

**Amendment to the *Water Quality Control Plan for the Los Angeles Region* to
Incorporate a Total Maximum Daily Load for Metals in Ballona Creek**

WHEREAS, the California Regional Water Quality Control Board, Los Angeles Region, finds that:

1. On July 7, 2005, the Regional Board established, by Resolution No. 2005-007, an amendment to the Water Quality Control Plan for the Los Angeles Region (Basin Plan) incorporating a Metals TMDL for Ballona Creek. The TMDL was subsequently approved by the State Water Resources Control Board in Resolution No. 2005-0078 on October 20, 2005 and by the Office of Administrative Law on December 9, 2005. The USEPA approved the Ballona Creek Metals TMDL on December 22, 2005. The effective date of the TMDL is January 11, 2006, when the Certificate of Fee Exemption was filed with the California Department of Fish and Game.
2. On February 16, 2006, the Cities of Bellflower, Carson, Cerritos, Downey, Paramount, Santa Fe Springs, Signal Hill, and Whittier (Cities) filed a petition for a writ of mandate challenging many aspects of the Los Angeles River Metals TMDLs and the Ballona Creek Metals TMDLs.
3. On May 24, 2007, the Los Angeles County Superior Court adopted the third of three rulings with respect to the writ petition. Collectively, all challenges to the TMDLs were rejected, except for one CEQA claim. Specifically, the Court ruled that the State and Regional Boards (Water Boards) should have adopted and circulated an alternatives analysis that analyzed alternatives to the project, pursuant to Public Resources Code section 21080.5 and section 3777 of Title 23 of the California Code of Regulations. Together, those authorities, which are applicable to the Water Boards' certified regulatory program, require that a project not be approved if there are feasible alternatives to the project that would substantially lessen a significant adverse effect that the activity may have on the environment. (Pub. Res. C. Section 21080.5(d)(2)(A).)
4. The Water Boards alleged that no feasible alternatives to the project exist that would result in less significant impacts to the environment, but the Court ruled that the Water Boards have the burden of formulating and analyzing alternatives, and that since the Cities had identified in their briefs two "potentially feasible alternatives", the environmental documentation was deficient because the Water Boards did not conduct an adequate alternatives analysis. Accordingly, the Court issued its writ of mandate, directing the Water Boards to adopt an alternatives analysis that analyzed feasible alternatives to the TMDLs and reconsider the TMDLs accordingly. The writ was limited to that issue, and the TMDLs were affirmed in all other respects. Accordingly, an alternatives analysis has been prepared to comply with the writ of mandate, and to explain the Regional Board's conclusion that no feasible alternatives exist that would result in less significant impacts and also achieve the project's purposes.
5. On June 22, 2007, an alternatives analysis was prepared and circulated for public comment, in order to comply with the writ of mandate. The alternatives analysis examines the alternatives suggested by the Cities in the litigation, as well as analogous alternatives suggested to the Regional Board during other TMDL proceedings by these and other stakeholders. The analysis concludes that none of the alternatives are feasible alternatives that would both result in less significant impacts and achieve the project's purposes. The Regional Board has reviewed that analysis, and in consideration of the entire administrative record, the Regional Board approves and adopts the analysis. The Regional Board finds that no feasible alternatives exist that would achieve the project's purpose and also result in less significant impacts to the environment than the TMDL as previously adopted.

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6. Considering the alternatives analysis, the Regional Board finds that the TMDL as originally proposed and adopted is appropriate. The Regional Board further finds that nothing in the alternatives analysis, nor any of the evidence generated, presents a basis for the Regional Board to conclude that it would have acted differently when it adopted the TMDLs had the alternatives analysis been prepared and circulated at that time.
7. A revised Basin Plan amendment was circulated on June 22, 2007. The revised amendment replaces the previous implementation deadlines that were tied to “the effective date of the TMDL”, with the specific dates that were set when the TMDL previously became effective.

[ONE OF TWO FOLLOWING FINDINGS, AS APPROPRIATE]

8. [FOR USE IF THE COURT DOES NOT ORDER THE TMDL TO BE VACATED] The writ of mandate does not order the Regional Board to vacate the TMDL. Accordingly, including specific dates in the basin plan is not a substantive change to the regulation.

[OR]

8. [FOR USE IF THE COURT ORDERS THE TMDL TO BE VACATED] Readopting the TMDL while maintaining the existing compliance schedule is warranted, and the Court’s order does not justify additional time to comply with the TMDL for any of the following reasons:
 - a. The TMDL was not stayed during the Court proceedings, and jurisdictions responsible for complying with the TMDL reasonably should have been planning to meet the existing timeline. None of the petitioners are subject to this TMDL, and no showing has been made by any responsible jurisdiction that the timeframe is inappropriate as a result of the litigation or the alternatives analysis;
 - b. The alternatives analysis does not change the Regional Board’s conclusion that feasible alternatives do not exist to the TMDL that would achieve the project’s purposes and result in less significant impacts to the environment, and therefore the original TMDL is not being altered as a result;
 - c. The TMDL regulates eight jurisdictions in the Ballona Creek Watershed, all of whom have proceeded to implement the TMDL in reliance on the existing schedule;
 - d. The Cities who filed the petition challenging the Los Angeles River and Ballona Creek Metals TMDLs are not located in the Ballona Creek Watershed. Specifically, the cities of Carson, Downey, Paramount, and Signal Hill are in the Los Angeles River Watershed. The cities of Bellflower, Cerritos, Santa Fe Springs, and Whittier are not located in either Watershed and are thus not subject to the requirements of either TMDL that was subject to the writ petition. The parties to the litigation, which are not located within the Ballona Creek Watershed, are not subject to the Ballona Creek Metals TMDL, and thus require no time to comply;
 - e. Even though the TMDL was temporarily vacated, the lapse in time between the issuance of the writ and the Regional Board’s readoption is less than 90 days, which is insignificant in comparison to the 15-year compliance schedule;
 - f. Maintaining the original time schedule is consistent with the project purpose, and with the Regional Board’s mission including expeditious restoration of California’s water quality. It is also in the public interest in that restoring the Ballona Creek Watershed will improve the environment and thus the quality of life of the residents in the Watershed.
9. The documents generated for this proceeding, along with the CEQA checklist dated March 28, 2005; the Ballona Creek Metals TMDL staff report dated July 7, 2005; response to comments on the June 12, 2004 and March 28, 2005 draft TMDLs; and any subsequent responses to comments, fulfill the requirements of 23 Cal Code Regulations §3777.

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THEREFORE, be it resolved that:

1. Pursuant to Sections 13240 and 13242 of the California Water Code, the Regional Board, after considering the entire record, including oral testimony at the hearing, hereby readopts the amendments to Chapter 7 of the Water Quality Control Plan for the Los Angeles Region as set forth in Attachment A hereto, and retroactively affirms Resolution No. 2005-007, to incorporate the elements of the Ballona Creek Metals TMDL. Resolution No. 2005-007 is hereby incorporated by reference.
2. The Regional Board hereby certifies the final Addendum to CEQA Documentation as a part of the final CEQA substitute environmental documentation.
3. The Executive Officer is directed to forward copies of the Basin Plan amendment to the State Board in accordance with the requirements of section 13245 of the California Water Code.
4. The Regional Board requests that the State Board approve the Basin Plan amendment in accordance with the requirements of sections 13245 and 13246 of the California Water Code and forward it to OAL and the USEPA.
5. If during its approval process Regional Board staff, the State Board or OAL determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Board of any such changes.
6. The Executive Officer is authorized to sign a Certificate of Fee Exemption.

I, Deborah Smith, Interim Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Los Angeles Region, on September 6, 2007.

Deborah J. Smith
Interim Executive Officer

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